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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,962	01/21/2004	Hironobu Takizawa	17378	3889
23389 7590 03/11/2010 SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530				
EXAMINER				
TOWA, RENE T				
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3736				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/761,962

Applicant(s)

TAKIZAWA ET AL.

Examiner

RENE TOWA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3, 11, 13-28, 30, 32-44 and 50 is/are pending in the application.
- 4a) Of the above claim(s) 3, 11, 13-28, 30 and 32-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 44 and 50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office action is responsive to an amendment filed January 27, 2010. Claims 3, 11, 13-28, 30, 32-44 & 50 are pending. So far, claims 3, 11, 13-28, 30 & 32-43, are withdrawn. Claims 1-2, 4-10, 12, 29, 31, 45-49 & 51-53 have been cancelled.

Claim Objections

2. Claims 44 & 50 are objected to because of the following informalities:

In regards to claims 44 & 50, at line 1, the limitations "medial capsule" should apparently read --medical capsule--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 44 & 50 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant's claim 44 require a "curvable handle"; however, no such limitations exists in the Application as original filed. For example, page 17 of the original application, which Applicant contends, supports this limitation only pertains to handle wherein "[t]he upper portion of the handle 52 may folded back along the upper edge of the toilet bowl 53 to hold the retrieval tool 32D"

(see page 17 at lines 6-8). As such, the Examiner does not find the term "folding back" to equate to the terms "curving" and "curvable," especially as depicted in the elected embodiments of figs. 5-7 of the instant specifications. As such, the Examiner submits that the claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 44 & 50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claim 44, at line 6, the claim recites "the catching unit includes a magnet"; at line 8, the claim then recites "the catching unit is a net"; finally, the claim recites at line 9 that "at least a part of the net...is a magnet or a magnetic material." These limitations render the claim indefinite since the catching unit is net, which the applicant's claim already defines as having a magnet, than later defines a magnet or a magnetic material. It is unclear whether the catching unit includes a magnet or a magnetic material. The Applicant's instant specifications only call for a catching unit having a magnet or a magnetic material as opposed to a combination thereof.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. **Claim 44** is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman (US 3,540,433), Schuchardt et al. (US 4,206,000), and further in view of Hoffman et al. (US 2,617,996).

Brockman discloses a medical strainer device 20 comprising a catch unit 24 for catching a sample that is discharged from a patient's body with feces (see figs. 1-5; col. 3, lines 1-5, 7-13 & 15-22; col. 5, lines 48-67). Brockman further discloses a medical strainer device 20 wherein the catch unit 24 is a filtering net 36 capable of holding a medical capsule discharged from a human body (*i.e. since the unit 24 is capable of holding tapeworms and pinworms*) (see figs. 1-5; column 3/lines 1-5, 7-13 & 15-22).

Brockman disclose a system, as described above, that fails to explicitly teach a catch unit comprising a net comprising a magnet or magnetic material or a curvable handle.

However, **Schuchardt et al.** teach that it is known to provide a filtering net with a magnet 23 for removing magnetic particles from a flow stream (see abstract; see fig. 1; see col. 3, lines 20-33).

Moreover, **Hoffman et al.** discloses a medical capsule retrieval device comprising:

(a) a curvable handle (3, 4) (i.e. the arms (3, 4) are metallic and resilient) capable of adapting to a shape of a portion of a toilet bowl (see fig. 1); and,

(b) a catching unit 1, the catching unit 1 being connected with one end of the handle and having a size to allow covering a drain hole of a toilet bowl (see fig. 2).

The Examiner takes official notice that it is known to provide biological sample carrying medical capsules that are discharged within a patient's feces with a magnetic material or magnet so as to conveniently remove the capsule from feces by situating a permanent magnet adjacent the capsule thereby separating the capsule from the feces; Brockman teaches a system comprising a net for the collection of biological samples that are discharged within a patient's feces for later analysis (see abstract); since Schuchardt et al. teach that it is known to provide a net with magnets 23 to remove magnetic particles from a flow stream (see abstract & fig. 1), it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the system of Brockman with a net comprising a magnet as taught by Schuchardt et al. in order to conveniently remove the capsule from feces when the capsule is situated adjacent the magnet of the net so as to thereby separate the capsule from the feces.

Furthermore, since Hoffman et al. teach a device that includes curvable handle (3, 4) that are shaped to provide hook-like formations at the outer free ends thereof so as to resist any displacement imposed in or from the toilet bowl by any normal force imposed upon the device but which may be readily inserted in or removed from said bowl (see col. 1, lines 8-13 & 47-55; col. 2, lines 1-12), it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the device of Brockman as modified by Schuchardt et al. with a curvable handle as taught by Hoffman et al. in order to provide hook-like formations at the outer free ends thereof

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so as to resist any displacement imposed in or from the toilet bowl by any normal force imposed upon the device but which may be readily inserted in or removed from said bowl.

Moreover, since

a) one of ordinary skill in the art could have combined the teachings of Brockman with those of Schuchardt et al. and Hoffman et al. as suggested in the rejections supra by known methods,

b) in the combination, each element (i.e. the strainer of Brockman, the magnets of the screen of Schuchardt et al., and the handle of Hoffman et al.) in the combination would have performed the same function as it did separately; and,

c) one of ordinary skill in the art would have recognized that the results of the combination were predictable (i.e. rendering the screen of Brockman magnetic so as to attract a medical capsule having a magnet or magnetic material while providing hook-like formations at the outer free ends thereof so as to resist any displacement imposed in or from the toilet bowl by any normal force imposed upon the device but which may be readily inserted in or removed from said bowl),

The Examiner submits that combining prior art elements according known methods to yield predictable results has recently been held to be obvious (see KSR International Co. v. Teleflex Inc., 550 U.S.---, 82 USPQ2d 1385 (2007)).

8. **Claim 50** is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman ('433), Schuchardt et al. ('000), Hoffman et al. ('996) and further in view of Paulin (US 4,309,782).

Brockman as modified by Schuchardt et al. and Hoffman et al. discloses a system, as described above, that teaches all the limitations of the claim except for a bag to enclose the specimen together with a unit of the specimen retrieval device.

However, **Paulin** discloses a device comprising a bag 12 to enclose a specimen together with a catch unit 46 of the specimen retrieval device 16 for temporary storage or transport, after the specimen has been collected (see abstract; see figs. 1-3; col. 2, lines 20-32 & 62-67).

Brockman teaches a sample retrieval device for collecting the fecal specimen; since Paulin teaches a bag for a storing a medical retrieval device for temporary storage or transport to a physician's office or a laboratory, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the system of Brockman as modified by Schuchardt et al. and Hoffman et al. above with a bag as taught by Paulin in order to store and/or transport the collected specimen to a physician's office and/or laboratory.

9. **Claim 50** is rejected under 35 U.S.C. 103(a) as being unpatentable over Brockman ('433), Schuchardt et al. ('000), Hoffman et al. ('996), and further in view of Slover et al. (US 4,445,235).

Brockman as modified by Schuchardt et al. and Hoffman et al. discloses a system, as described above, that teaches all the limitations of the claim except for a bag to enclose the specimen together with a unit of the specimen retrieval device.

However, **Slover et al.** disclose a device comprising a bag to enclose a specimen together with a catch unit of the specimen retrieval device for temporary storage or transport, after the specimen has been collected (see column 4/lines 21-25).

Brockman teaches a sample retrieval device for collecting the fecal specimen; since Slover et al. teach a bag for a storing a medical retrieval device for temporary storage or transport to a physician's office or a laboratory, it would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to provide the system of Brockman as modified by Schuchardt et al. and Hoffman et al. above with a bag as taught by Slover et al. in order to store and/or transport the collected specimen to a physician's office and/or laboratory.

Response to Arguments

10. Applicant's arguments filed January 27, 2010 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 939,013 to Haddock discloses a cuspidor.

US 4,257,635 to Mainprice discloses a scoop device.

US 6,721,965 to Alston discloses a toilet bowl screen.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to RENE TOWA whose telephone number is (571)272-8758. The examiner can normally be reached on M-F, 2:00PM-10:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Rene Towa/
Examiner, Art Unit 3736

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736